IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15662 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMBO INTERNATIONAL & P.T. DILIP & 1 - Petitioner(s)

Versus

JT.CHARITY COMMISSIONER & 3 - Respondent(s)

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Appearance :

MR UTPAL M PANCHAL for Petitioner No(s).: 1.

MRS KETTY A MEHTA for Petitioner No(s).: 2.

GOVERNMENT PLEADER for Respondent No(s).: 1.
NOTICE SERVED BY DS for Respondent No(s).: 1.
UNSERVED-REFUSED (N) for Respondent No(s).: 2.
MR SK PATEL for Respondent No(s).: 2.
MR RS SANJANWALA for Respondent No(s).: 3,4.

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 17/08/2005

ORAL JUDGMENT

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1. Rambo International and P.T. Dilip,

petitioners, have filed this petition under Article 226 and 227 of the Constitution of India with a prayer that this Court may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction, quashing and setting aside the proceedings of Judicial Miscellaneous Application No.19 of 2005 and also this Court may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction, quashing and setting aside the order dated 30th July, 2005, passed by the respondent No.1 i.e. Joint Charity Commissioner, Surat, in proceedings of Judicial Miscellaneous Application No.19 of 2005 at Annexure – 'D-1'.

2. The facts leading to this application are as under :

2.1 The petitioner is organizing the handloom and handicraft fairs and amusement parks every year in various parts of Gujarat and Maharashtra

States, wherein, the people engaged in manufacturing handloom and handicrafts items in various parts of the country, participate in such fairs with their goods.

3. It is a case of the petitioner that petitioner is organizing such fair in the city of Surat regularly and earns lacs of rupees to the Municipal Corporation by way of Taxes, Octroi, etc., which is more than Rs.1 crore.

4. It is a case of the petitioner that petitioner No.2 – Trust is having a huge open land which they give for temporary use for holding fairs exhibitions, etc., on rent and from earning made out of it, is being used for various education activities for the women. The Vanita Vishram is purely for girls' upliftment and building up more than 8000 students for which they need financial aid.

5. It is a case of the petitioner No.2 that Vanita Vishram Trust owns, among other properties an open plot of land, bearing Survey Nos.919, 926, 996 and 1024 admeasuring 98078 Sq. Mtrs., being now Final Plot No.601 in Town Planning Scheme No.5 in Athwa Lines at Surat (hereinafter referred to as 'the suit property').

6. It is a case of the petitioner that in past, one Public Interest Litigation being **Special Civil Application No.6331/1996** was filed by one Mr. Kaushik Mahendrabhai Acharya in case of **Kaushik Mahendrabhai Acharya V/s. Vanita Vishram**. In that matter, the Division Bench of this Court (**Coram : G.D. Kamat, C.J. and C.K. Thakkar, J., as he was then**) has heard the matter and passed a reasoned order on 27.09.1996. Paragraph No.26 of the said order is as under :

> “We propose not to interfere with the permission to use the ground by Dilip

at this stage as it may be inequitable to do so. The fact remains that he has erected large number of stalls and the fair / exhibition is in a midstream. Besides, he has obtained all necessary permission from the relevant authorities. But, we are, however, forced to direct the trustees that, in future, they shall publish appropriate advertisement in leading newspapers, inviting offers for the use of grounds and act in accordance with law having regard to the paramount interest of the Trust and Trust alone. These directions, in our view, is necessary so that the Trustees do not give a wrong impression about themselves and that they are interested in enriching themselves. It should be borne in mind that Trustees must have the interest of the Trust paramount in their minds. Equally, a direction is also necessary to the Joint Charity Commissioner to proceed with the applications pending before him in

> accordance with law into the management and affairs of the Trust in the light of the allegations made and he may not close the proceedings on the specious plea that the fair or exhibition is over" (emphasis supplied).

7. Mr. Panchal, learned advocate, has also pointed out that pursuant to the aforesaid Division Bench judgment/order, there was earlier application U/S. 41-A of Bombay Public Trust Act, 1950, filed vide Judicial Miscellaneous Application No.17/2004 by one Mr. Nainish Madanlal Shukla. In this matter, the then Charity Commissioner has also passed an order dated 7th August, 2004 in connection with the said matter of the property of the said Trust. A Charity Commissioner, after considering the said facts, gave about nine directions in connection with the property of Trust in this behalf.

8. It is a case of Vanita Vishram Trust that the Trust gives this property on lease from time to time and this being a tribal land, it fetches valuable amount, so compensation may be given for giving this property on lease. It is also a case of the petitioner that in the month of 'Shravan' on the occasion of 'Rakshabandhan', 'Janmashtami', 'Ganesh Chaturthi' and other religious occasions, it is a practice of the City of Surat to have the fair in that time, so that, large number of persons, the pilgrims who come to Surat can visit the fair and they may spent sizeable amount which may earn sizeable income to the Municipal Corporation and other dealers who also earn in this behalf.

9. Pursuant to the aforesaid order of the Division Bench as well as order of the Charity Commissioner, the Trust has given advertisement on 18th June, 2005 in the newspapers of 'Divya Bhashkar', 'Gujarat Samachar' and 'Gujarat

Mitra'. In that advertisements, the tenders were invited for holding fair on condition that only persons who can pay not less than 30 lacs by Bank Draft on or before 30th June, 2005, if eligible, with a condition to pay Municipal Tax, Educational Tax and other Taxes over and above this and same will be opened on 5th July, 2005. The said advertisement is annexed at Page 45 to the petition vide Annexure – 'B'. The offer was also made for use of ground for the period from 10th August, 2005 to 10th October, 2005.

10. It is a case of the petitioner that pursuant to the said advertisements, petitioner has submitted a tender on 27.6.2005.

11. It is a case of the petitioner that one Jashwantlal Patel and his two sons, viz., Pankaj and Vipul were initially with the petitioner and since two years, they have separated from the petitioner and are organising their own fairs.

12. It is also a case of the petitioner that last year, Jashwantlal and his sons participated in the tender process of the petitioner No.2 – Trust and had offered Rs.33,33,333/- [Rupees Thirty three lacs thirty three thousand three hundred thirty three] and their bid was accepted in presence of representatives appointed by the respondent No.1 - Joint Charity Commissioner, but they failed to deposit the said amount and, ultimately, everybody was put at heavy loss of about Rs.30 lacs and even the Surat Municipal Corporation was also put at a loss of lacs of rupees by way of Municipal Taxes, Octroi, etc.

13. It is a case of the petitioner that this year also, Pankaj Patel, son of Shri Jashwantlal Patel and the petitioner have participated in the tender process pursuant to the aforesaid advertisement.

14. It is the case of the petitioner that in view of the past experience, Pankaj Patel realised that he may not be able to get a tender and with a view to see that petitioner may not get a tender. Shri Jashwantlal Patel and his son Pankaj Patel got an application being Judicial Miscellaneous Application No.19/2005 against the Trust, Trustees, etc., made through one Kalpesh Bhikhabhai Rathod and Chandresh Ranjitbhai Sorathia before the Charity Commissioner U/S. 41-A of the Bombay Public Trust Act to frustrate the allotment of land to the petitioner and, therefore, it is a complete abuse of process of law. In the said application, an application for interim injunction was also filed by the applicants below Exh.4 where the Charity Commissioner by his interim order dated 28.6.2005 restrained the petitioner No.2 – Trust from taking any action pursuant to the tenders till the next order.

15. Though the Charity Commissioner was aware that in this case, advertisement was issued on 18th June, 2005 and fair was to be conducted on 10th August, 2005, unfortunately, the matter did not proceed further and ultimately, the order was passed by the Joint Charity Commissioner on 30th June, 2005 by which the Charity Commissioner allowed the application of the applicant and directed that in connection with the advertisement given on 18th June, 2005 and the tender issued by them, the Trust should not act in this behalf. It may be noted that aforesaid directions issued by the Charity Commissioner is completely not in accordance with the earlier order of the Division Bench, because by this way, entire process of conducting the fair will be frustrated. The purpose of the order of the Division Bench was that wide publicity should be given and some adequate time should be given to the tenderer. In this case, when the Trust has given an advertisement on 18th June, 2005 for a

fair to be conducted from 10th August, 2005 where there is a stipulation to deposit the amount that Trustees has acted with utmost care and skill and with a view to see that the property of Trust properly used in fair and reasonable manner and fetches highest income. The Charity Commissioner further directed that even the tender received by the Trust, may also be returned back in this behalf which will again for the purpose of the Trust.

16. Being aggrieved and dissatisfied with the said order, originally petitioner has filed this petition before this Court making Trust as Respondent No.2 somewhere on 29th July, 2005. On 2nd August, 2005, when the matter was heard by this Court. On 3rd August, 2005, this Court has passed the detailed order in this behalf. Thereafter, the matter was again heard and this Court passed an order on 4th August, 2005. On that day, Trust was made as a co-petitioner i.e.

petitioner No.2. The Court has considered the judgment of the Division Bench of this Court in the case of Syedna Mohamed Burhanuddin the 52nd Dai-Ul-Multaq & Head of the Dawoodi Bohra Community vs. Charity Commissioner, Gujarat State, Ahmedabad & Others, **1992(1) GLH 331** and also another judgment of this Court in case of Navinchandra Jasani & Other vs. Pravinchadra Jasani & Other, **2003(1) GLR 392**. It was the contentions of Mrs. Mehta on that day that in view of the judgment of this Court, the application filed by the applicant does not fall within the scope of Sec.41-A of the Act. Shri Patel on behalf of Respondent No.2 also appeared and stated that he desires to file affidavit-in-reply and time was given. On behalf of Charity Commissioner, learned Assistant Government Pleader waived service of notice and notice has issued to Kalpesh Bhikhabhai Rathod and Chandresh Ranjitbhai Sorathiya who have originally filed an application before the Charity Commissioner.

The notices were made returnable on 9th August, 2005 in view of the fact that the fair will start on 10th August, 2005.

17. Being aggrieved and dissatisfied with the said order, Shri Kalpesh Bhikhabhai Rathod has filed Letters Patent Appeal before this Court on 8th August, 2005 vide Letters Patent Appeal No.1093/2005. In that Letters Patent Appeal, Rambo International and P.T. Dilip has filed Civil Application No.7243 of 2005 for vacation of interim relief. On 10th August, 2005, the Division Bench of this Court (Coram : G.S. Singhvi & A.S. Dave, J.J.)has passed the following order :

> "Notice to the respondents for August 29, 2005 for final disposal of the appeal. Notice of stay as well. In the meanwhile the operation of the order dated 4.8.2005 passed by the learned Single Judge shall remain stayed. Direct Service is permitted.

> It shall be the duty of the appellants to serve the respondents before the next date failing which this order shall stand automatically vacated."

18. The main Letters Patent Appeal as well as Civil Application has also come before the Division Bench (Coram : G.S. Singhvi & A.S. Dave, J.J.) on 12th August, 2005. In that case, the Division Bench has passed the following order :

> " In view of the statement made by the learned counsel for the parties, the application as well as the Letters Patent Appeal are disposed of with the following directions :-
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> (i) Interim order dated 10.08.2005 shall remain operative till the decision of the Special Civil Application filed by the appellant;
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> (ii)Learned counsel for the parties shall positively appear before the

learned Single Judge on 17.08.2005.

> We request the learned Single Judge to entertain the prayer made by the counsel for the parties for final hearing of the Special Civil Application.

19. Pursuant to the direction and request of the Division Bench, I have heard the matter. I have heard Mr. R.S. Sanjanwala on behalf of respondent Nos. 3 and 4 – original respondents, Mrs. Mehta for Trust, Mr. Panchal for original petitioner, who has deposited Rs. 33.10 lacs earlier pursuant to tender which they have deposited before the Trust on 6th August, 2005 as per Page 87-A of the petition. Heard, Smt. K.A. Mehta for Trust.

20. Before the matter was taken up for hearing, this Court has considered the judgment, in case of **Patel Scrap Traders V/s. State of Gujarat and Others**, **AIR 2005 Gujarat 13** and **Letters Patent Appeal No.1353/2004 in Special Civil Application**

No.4630/2004 with Civil Application No. 4961/2004, the Division Bench of this Court (Coram : M.S. Shah & D.A. Mehta, J.J.) has passed an order on 24th August, 2004.

21. In view of the above judgment/order, this Court requests the petitioner as well as respondent No.2 to raise the offer for the fair in open Court. Thereafter, in the interest of Trust, to accept the higher amount offered by the petitioner of Rs. 33.10 lacs, Mr. Panchal's client - original petitioner stated that he is prepared to pay more Rs. 1.90 lacs i.e. Rs. 35 lacs minus Rs. 33.10 lacs which is already paid to respondent No.2 - Trust. Mr. Patel's client stated that he is prepared to pay Rs. 40 lacs, but he stated that he might not only require about 8 to 10 days for getting preparation, but for inviting people, he will require one month time for conducting the fair and for such preparation, he is prepared to pay Rs.40

lacs.

22. Mrs. Mehta submitted that it is no doubt true that the offer of Mr. Patel's client is for higher amount but the said amount is offered with certain conditions and such conditions are not acceptable to the Trust because the land in question is given on rent from 10th August, 2005 to 10th October, 2005. After 10th October, 2005, the petitioner No.2 – Trust may require the land in question for some other purpose. If, they want to give on lease for further period after 10th October, 2005 then they may charge whatever they want. Mr. Patel has not agreed in this behalf. He insists 60 days to be counted not from when he will take possession of the land but the day on which he starts the fair.

23. In view of the peculiar facts and circumstances of the case, this Court do feel that offer given by Mr. Patel's client of Rs.40

lacs though is higher amount than other offer, but he has given certain conditions and the said conditions are not acceptable to the Trust and therefore, the Trust as well as this Court is not able to accept the offer of Mr. Patel's client.

24. In view of the facts and circumstances of the case, this Court has no alternative but to accept the offer of petitioner of Rs.35 lacs [Rupees thirty five lacs] in this behalf.

25. In view of the same, if the following directions are given, it would be in the interest of justice.

(i) The petitioner will pay rest of the amount Rs.1,90,000/- i.e. Rs.35 lacs minus Rs. 33.10 lacs, before the petitioner No.2 – Vanita Vishram Trust on 18th August, 2005 by account payee cheque in favour of the Trust. As soon as the said amount is realised, it will be

open for Trust to give possession of the land in question to Mr. Panchal's client.

(ii) Irrespective of any permission that may be taken, the lease period will start from 19th August, 2005 till 19th October, 2005 for which Mr. Panchal's client i.e. petitioner will have to pay in all Rs.35 lacs. It will be open for the petitioner to obtain necessary permission in this behalf, even those permissions are not obtained, the amount which is given to the Trust will not be refunded on any terms and conditions.

26. After this order has been passed, Mr. Sanjanwala prays that this order may be stayed up to 24th August, 2005. In view of the peculiar facts and circumstances of the case, the request of Mr. Sanjanwala is not accepted in this behalf.

27. Accordingly, the petition is allowed to the aforesaid extent. Rule is made absolute.

[K.M. MEHTA, J.]

#Dave